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00000 RRG-05-039

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DOCKET FILE COPY ORIGINAL

Where has this been?
~~February 4, 2005~~
FCC/BELLON FEB 04 2005

Federal Communications Commission
International Bureau - Earth Stations
P.O. Box 358160
Pittsburgh, PA 15251-5160

Re: Petition for Waiver of Application Fees for File No. SES-LFS-20050203-00133

Please find enclosed a petition of waiver of application fees for File No. SES-LFS-20050203-00133. As indicated in the enclosed petition, EchoStar Satellite L.L.C. has paid the \$8,260 fee for a VSAT initial application.

Sincerely,

*2 dg letter
Assigned to Regina
30 dg tickler
MAR
2/28/05*
Pantelis Michalopoulos /BDK
Pantelis Michalopoulos
Counsel for EchoStar Satellite L.L.C.

cc: Andrew S. Fishel, Managing Director, Office of Managing Director (via hand delivery)

Enclosure

Search Results report

05/09/2005

Fee Control Number: 00000RROG-05-039**Applicant Name:** ECHOSTAR SATELLITE LLC**City:****State:****Callsign:****Type of Request:** WF **Request Date:** 02/04/2005**Attorney Assigned:** JOANNE WALL**Remarks:****Applicant Contact:** PANTELIS MICHALOPOUL **Applicant Contact Phone:** 202-429-3000**Decision:** **Decision Date:** 00/00/0000**Date letter was signed:** 00/00/0000**Decision Published Date:** 00/00/0000**Status:** 02/07/2005 : FMD 03/07/2005 : OGC 03/10/2005 : GCH

04/15/2005 : MD : :

Total Number of records printed: 1

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)

EchoStar Satellite L.L.C.)

Petition for Waiver of)
Application Fees Pursuant to)
Section 1.1117 of the Commission's Rules)

To: Office of the Managing Director

PETITION FOR WAIVER OF APPLICATION FEES

EchoStar Satellite L.L.C. ("EchoStar") respectfully requests that, pursuant to Sections 1.3 and 1.1117 of the Commission's Rules,¹ and the Communications Act of 1934, as amended (the "Act"),² the Commission waive to the extent necessary certain application fees associated with its concurrently filed application seeking authority to operate 1,000,000 receive-only earth stations in the United States to receive Direct Broadcast Satellite ("DBS") programming from the EchoStar 5 satellite, operating at the Canadian Broadcasting Satellite Service ("BSS") orbital slot at 129° W.L.³ The Commission's Rules and the Act specifically provide that such fees may be waived where good cause is shown and the public interest would

¹ 47 C.F.R. §§ 1.3 and 1.1117.

² 47 U.S.C. § 158(d)(2).

³ See *EchoStar Blanket Receive-Only Earth Station Application -- 129 W.L.*, File No. SES-LFS-20050203-00133 (filed Feb. 3, 2005) ("Application"). For your convenience, enclosed is a copy of the Application materials to which this request for waiver is associated.

be served.⁴ As demonstrated below, good cause exists for, and the public interest would be served by, waiver of fees in this case because the application fee would not be commensurate with the Commission's actual costs of processing EchoStar's Application and would represent a regulatory barrier to EchoStar's proposed provision of service. If the Commission determines that a fee is required, EchoStar requests that the Commission find that the "VSAT" application fee is appropriate. EchoStar has already paid the \$8,260 fee for such applications, to which the instant request to provide service to up to a million receive-only dishes is similar.

I. BACKGROUND

EchoStar is requesting authorization for 1,000,000 receive-only earth station antennas in order to expand its provision of multichannel video services to consumers in the United States. The Commission's Rules do not designate any specific charges for the type of application being filed in the DBS service. The following schedule of charges for applications for the types of services which could be applied to EchoStar's Application include:

- Initial Application for a Fixed Satellite Very Small Aperture Terminal (VSAT) System = \$8,260.00⁵
- Receive-Only Earth Stations = \$340.00⁶

EchoStar's proposed network of DBS earth stations is most like a VSAT system, therefore, it should be subject to at most the \$8,260.00 application fee for an initial application for a VSAT system.

⁴ 47 C.F.R. § 1.1117; 47 U.S.C. § 158(d)(2).

⁵ 47 C.F.R. § 1.1107(6)(a).

⁶ 47 C.F.R. § 1.1107(5)(a).

*EchoStar's proposed system architecture consists of as many as 1,000,000 technically identical earth stations operating in the DBS portion of the Ku-band. This architecture is consistent with the FCC's definition of VSAT networks which are networks of technically identical small antennas that generally communicate with a larger hub station and operate in the 12/14 GHz frequency bands.*⁷ Because EchoStar believes that its system is most like a VSAT network, it has paid the \$8,260.00 application fee. However, if the Commission determines that the \$340.00 fee for receive-only earth stations applies to each of EchoStar's 1,000,000 consumer units, EchoStar seeks a waiver of that \$340,000,000.00 application fee.

II. GOOD CAUSE EXISTS FOR, AND THE PUBLIC INTEREST WOULD BE SERVED BY, WAIVER OF THE RECEIVE-ONLY EARTH STATION APPLICATION FEE

The Commission has the authority to waive application fees where -- such as here -- good cause is shown and the public interest would be served.⁸ As demonstrated below, a fee of up to \$340 million would be prohibitively high for EchoStar, would deny competitive service offerings to the public, and would not be commensurate with FCC processing resources.

A. FCC Application Fees are Intended to Recover the Costs of Standard Application Processing

The Commission's schedule of application fees is intended to reimburse the government for the work involved in providing certain regulatory services associated with processing applications. In setting the fees, the Commission has noted that "the charges represent a rough approximation of the Commission's actual cost of providing the regulatory

⁷ See *Streamlining the Commission's Rules and Regulations for Satellite Application and Licensing Procedures*, Order, 11 FCC Rcd. 21581, 21592 (1996).

⁸ See *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972).

actions listed” and that “the very core of this effort is to reimburse the government -- and the general public -- for the regulatory services provided to certain members of the public.”⁹

However, in certain instances, the Commission’s schedule of filing fees may not reasonably approximate the costs involved in handling a particular application or may not otherwise serve the public interest. For this reason, the Commission’s Rules and the Act allow for parties to seek a waiver of the application fees.¹⁰

A filing fee waiver is warranted here because many of the processing activities required to issue a new system license -- the costs of which the application fees are designed to recover -- are simply not required in reviewing EchoStar’s Application. For example, the Commission need not review 1,000,000 different technical parameters to grant EchoStar’s Application. Rather, as in the case of a VSAT network, the Commission only needs to review one set of technical parameters for all of the technically identical earth stations.

In similar contexts, the Commission has accepted application fees for VSAT networks. *See, e.g., Application of DIRECTV Enterprises, LLC*, DA 04-2526 (rel. Aug. 13, 2004) (approving application in which applicant paid VSAT application fee for 1,000,000 receive-only terminals to be used for DBS service from a Canadian satellite); *see also In the Matter of Digital Broadband Application Corp.*, Order, 18 FCC Rcd. 9455 (2003) (approving application in which applicant paid VSAT and fixed satellite transmit/receive earth station application fees for one hub earth station to be used with one million two-way FSS and DBS service from Canadian satellites). Thus, the \$8,260.00 application fee paid for this Application

⁹ *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, Report and Order, 2 FCC Rcd. 947, 948 (1987).

¹⁰ *See supra* note 4.

would be consistent with past practice and fairly compensate the Commission for the costs involved in its review of the application.

B. The Public Interest Would Be Served by Granting the Requested Fee Waiver

In addition to being supported by the requisite good cause, granting EchoStar's request for a waiver of application fees for its Application is also consistent with the public interest. As described in detail in the Application, grant of the authority requested by EchoStar to provide DBS services in the United States using the EchoStar 5 satellite at 129° W.L. will further a number of compelling public interest objectives. First, a grant would increase the number of markets in which EchoStar would be able to provide local-into-local programming for its subscribers and allow EchoStar to transition many of its customers currently receiving local channels on two satellite dishes to an offering where all the local stations are provided from the same dish, as required under the recently enacted Satellite Home Viewer and Extension Act of 2004.¹¹ Second, it would allow EchoStar to compete more effectively with established cable operators in the MVPD market. Lastly, grant of the Application will allow EchoStar to offer DBS services to the United States from an orbital location that has not previously been available to serve the U.S. market and allow EchoStar to bring substantial new satellite capacity to bear in providing DBS service to U.S. consumers.

EchoStar should not be required to pay a \$340.00 fee for each of its 1,000,000 earth stations merely because it is providing service from a non-U.S. satellite when an operator providing an identical service using a U.S. licensed satellite would not need to apply for licenses

¹¹ The Satellite Home Viewer Extension and Reauthorization Act of 2004 requires that satellite carriers allow all local programming to be received by subscribers by means of a single satellite dish. See Section 203 of the Satellite Home View Extension and Reauthorization Act of 2004 (enacted December 8, 2004).

for each of its consumer dishes.¹² The result would be overtly discriminatory treatment among DBS and Direct-to-Home ("DTH") providers serving the United States. Moreover, in its recent *Space Station Licensing Order*, the Commission concluded that there is no need for a satellite operator to seek separate authorization for routinely-licensed receive-only earth station antennas -- or to pay a separate fee -- if the Commission has concluded that the public interest is served by that provider's satellite being added to the Permitted Space Station List, including providers authorized to provide DTH services.¹³

III. CONCLUSION

Under current Commission fee guidelines, EchoStar could potentially be required to pay a fee of \$340.00 for each of its receive-only earth station. That would amount to a total fee of up to \$340,000,000.00. Clearly, the imposition of such a high fee was not what Congress or the Commission intended when the fee guidelines were adopted. Such an astronomical application fee would be a barrier to any operator that desires to offer an innovative, competitive service to the public, as proposed by EchoStar.


The financial hardship that a \$340 million filing fee would impose on EchoStar, or indeed any other entity, would clearly preclude an application from being filed at all. Filing fees should reimburse the government for the costs of processing applications, not act as a

¹² Except for the fact that EchoStar will be using a Canadian orbital location, EchoStar would not have to file an application for these earth stations. See 47 C.F.R. § 25.131(j); see also *In the Matter of Telesat Canada Petition for Declaratory Ruling for Inclusion of ANIK F1 on the Permitted Space Station List*, Order, 16 FCC Rcd. 16365, 16369 (2001) (holding that "receive-only earth stations receiving transmissions from any non-U.S. licensed satellite, regardless of whether the satellites is on the Permitted List, must be licensed.").

¹³ See *Amendment of the Commission's Space Station Licensing Rules and Policies*, Second Report and Order in IB Docket No. 02-34, Second Report and Order in IB Docket No. 00-248, and Declaratory Order in IB Docket No. 96-111, 18 FCC Rcd. 12507, 12516-17 (2003).

regulatory barrier to entry for competitive services. For all of the aforementioned reasons, EchoStar respectfully requests that the Commission grant the requested fee waiver to the extent necessary in conjunction with its Application to provide DBS service from EchoStar 5 at the 129° W.L. orbital location.

Respectfully submitted,


Pantelis Michalopoulos
Philip L. Malet
Stephoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036-1795
(202) 429-3000

Counsel for EchoStar Satellite L.L.C.

Dated: February 3, 2005

cc: Andrew S. Fishel, Managing Director, Office of the Managing Director (via hand delivery)

Approved by OMB
3060-0678

Date & Time Filed:
File Number: ---
Callsign/Satellite ID:

APPLICATION FOR EARTH STATION AUTHORIZATIONS	FCC Use Only
FCC 312 MAIN FORM FOR OFFICIAL USE ONLY	

APPLICANT INFORMATION

Enter a description of this application to identify it on the main menu:
EchoStar Blanket Recieve-Only Earth Station Application -- 129 W.L.

1-8. Legal Name of Applicant

Name:	EchoStar Satellite L.L.C.	Phone Number:	303-723-1000
DBA Name:		Fax Number:	303-723-1699
Street:	9601 South Meridian Blvd.	E-Mail:	
City:	Englewood	State:	CO
Country:	USA	Zipcode:	80112 -
Attention:	David K Moskowitz		

9-16. Name of Contact Representative (If other than applicant)

Name:	Pantelis Michalopoulos	Phone Number:	202-429-6494
Company:	Steptoe & Johnson LLP	Fax Number:	202-429-3902
Street:	1330 Connecticut Ave., N.W.	E-Mail:	pmichalo@steptoe.com
City:	Washington	State:	DC
Country:	USA	Zipcode:	20036-1795
Contact Title:		Relationship:	Legal Counsel

CLASSIFICATION OF FILING

17. Choose the button next to the classification that applies to this filing for both questions a. and b. Choose only one for 17a and only one for 17b.

a.

- ☒ a1. Earth Station
(N/A) a2. Space Station

b.

- ☐ b1. Application for License of New Station
☐ b2. Application for Registration of New Domestic Receive-Only Station
(N/A) b3. Amendment to a Pending Application
(N/A) b4. Modification of License or Registration
(N/A) b5. Assignment of License or Registration
(N/A) b6. Transfer of Control of License or Registration
(N/A) b7. Notification of Minor Modification
(N/A) b8. Application for License of New Receive-Only Station Using Non-U.S. Licensed Satellite
(N/A) b9. Letter of Intent to Use Non-U.S. Licensed Satellite to Provide Service in the United States
☐ b10. Other (Please specify)
☒ b11. Application for Earth Station to Access a Non-U.S. satellite Not Currently Authorized to Provide the Proposed Service in the Proposed Frequencies in the United States.

17c. Is a fee submitted with this application?

☒ If Yes, complete and attach FCC Form 159. If No, indicate reason for fee exemption (see 47 C.F.R. Section 1.1114).

☐ Governmental Entity ☐ Noncommercial educational licensee

☐ Other (please explain):

17d.

Fee Classification BGV – Fixed Satellite VSAT System

18. If this filing is in reference to an existing station, enter:

(a) Call sign of station:
Not Applicable

19. If this filing is an amendment to a pending application enter:

(a) Date pending application was filed:

Not Applicable

(b) File number of pending application:

Not Applicable

TYPE OF SERVICE

20. NATURE OF SERVICE: This filing is for an authorization to provide or use the following type(s) of service(s): Select all that apply:

- ☐ a. Fixed Satellite
- ☐ b. Mobile Satellite
- ☐ c. Radiodetermination Satellite
- ☐ d. Earth Exploration Satellite
- ☐ e. Direct to Home Fixed Satellite
- ☐ f. Digital Audio Radio Service
- ☒ g. Other (please specify) DBS Service

21. STATUS: Choose the button next to the applicable status. Choose only one.

☐ Common Carrier ☒ Non-Common Carrier

22. If earth station applicant, check all that apply.

☐ Using U.S. licensed satellites

☒ Using Non-U.S. licensed satellites

23. If applicant is providing INTERNATIONAL COMMON CARRIER service, see instructions regarding Sec. 214 filings. Choose one. Are these facilities:

☐ Connected to a Public Switched Network ☐ Not connected to a Public Switched Network ☒ N/A

24. FREQUENCY BAND(S): Place an "X" in the box(es) next to all applicable frequency band(s).

☐ a. C-Band (4/6 GHz) ☐ b. Ku-Band (12/14 GHz)

☒ c. Other (Please specify upper and lower frequencies in MHz.)

Frequency Lower: 12200

Frequency Upper: 12700

TYPE OF STATION

25. CLASS OF STATION: Choose the button next to the class of station that applies. Choose only one.

☐ a. Fixed Earth Station

☐ b. Temporary-Fixed Earth Station

☐ c. 12/14 GHz VSAT Network

☐ d. Mobile Earth Station

(N/A) e. Geostationary Space Station

(N/A) f. Non-Geostationary Space Station

☒ g. Other (please specify) DBS

26. TYPE OF EARTH STATION FACILITY: Choose only one.

☐ Transmit/Receive ☐ Transmit-Only ☒ Receive-Only ☐ N/A

PURPOSE OF MODIFICATION

27. The purpose of this proposed modification is to: (Place an 'X' in the box(es) next to all that apply.)

Not Applicable

ENVIRONMENTAL POLICY

28. Would a Commission grant of any proposal in this application or amendment have a significant environmental impact as defined by 47 CFR 1.1307? If YES, submit the statement as required by Sections 1.1308 and 1.1311 of the Commission's rules, 47 C.F.R. §§ 1.1308 and 1.1311, as an exhibit to this application. A Radiation Hazard Study must accompany all applications for new transmitting facilities, major modifications, or major amendments.

☐ Yes ☒ No

ALIEN OWNERSHIP Earth station applicants not proposing to provide broadcast, common carrier, aeronautical en route or aeronautical fixed radio station services are not required to respond to Items 30-34.

29. Is the applicant a foreign government or the representative of any foreign government?

☐ Yes ☒ No ☐ N/A

30. Is the applicant an alien or the representative of an alien?

☐ Yes ☐ No ☒ N/A

31. Is the applicant a corporation organized under the laws of any foreign government?

☐ Yes ☐ No ☒ N/A

32. Is the applicant a corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country?

☐ Yes ☐ No ☒ N/A

33. Is the applicant a corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country?

☐ Yes ☐ No ☒ N/A

34. If any answer to questions 29, 30, 31, 32 and/or 33 is Yes, attach as an exhibit an identification of the aliens or foreign entities, their nationality, their relationship to the applicant, and the percentage of stock they own or vote.

BASIC QUALIFICATIONS

35. Does the Applicant request any waivers or exemptions from any of the Commission's Rules?
If Yes, attach as an exhibit, copies of the requests for waivers or exceptions with supporting documents.

☒ Yes ☐ No

36. Has the applicant or any party to this application or amendment had any FCC station authorization or license revoked or had any application for an initial, modification or renewal of FCC station authorization, license, or construction permit denied by the Commission? If Yes, attach as an exhibit, an explanation of circumstances.

☒ Yes ☐ No

37. Has the applicant, or any party to this application or amendment, or any party directly or indirectly controlling the applicant ever been convicted of a felony by any state or federal court? If Yes, attach as an exhibit, an explanation of circumstances.

☐ Yes ☒ No

38. Has any court finally adjudged the applicant, or any person directly or indirectly controlling the applicant, guilty of unlawfully monopolizing or attempting unlawfully to monopolize radio communication, directly or indirectly, through control of manufacture or sale of radio apparatus, exclusive traffic arrangement or any other means or unfair methods of competition? If Yes, attach as an exhibit, an explanation of circumstances

☐ Yes ☒ No

39. Is the applicant, or any person directly or indirectly controlling the applicant, currently a party in any pending matter referred to in the preceding two items? If yes, attach as an exhibit, an explanation of the circumstances.

☐ Yes ☒ No

40. If the applicant is a corporation and is applying for a space station license, attach as an exhibit the names, address, and citizenship of those stockholders owning a record and/or voting 10 percent or more of the Filer's voting stock and the percentages so held. In the case of fiduciary control, indicate the beneficiary(ies) or class of beneficiaries. Also list the names and addresses of the officers and directors of the Filer.

41. By checking Yes, the undersigned certifies, that neither applicant nor any other party to the application is subject to a denial of Federal benefits that includes FCC benefits pursuant to Section 5301 of the Anti-Drug Act of 1988, 21 U.S.C. Section 862, because of a conviction for possession or distribution of a controlled substance. See 47 CFR 1.2002(b) for the meaning of "party to the application" for these purposes.

☒ Yes ☐ No

42a. Does the applicant intend to use a non-U.S. licensed satellite to provide service in the United States? If Yes, answer 42b and attach an exhibit providing the information specified in 47 C.F.R. 25.137, as appropriate. If No, proceed to question 43.

☒ Yes ☐ No

42b. What administration has licensed or is in the process of licensing the space station? If no license will be issued, what administration has coordinated or is in the process of coordinating the space station?Canada

43. Description. (Summarize the nature of the application and the services to be provided). (If the complete description does not appear in this box, please go to the end of the form to view it in its entirety.)

This application requests a blanket license for 1,000,000 receive-only earth stations to receive DBS service from the Canadian BSS Orbital Position at 129 W.L. See attached narrative for additional detail.

CERTIFICATION

The Applicant waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application. The applicant certifies that grant of this application would not cause the applicant to be in violation of the spectrum aggregation limit in 47 CFR Part 20. All statements made in exhibits are a material part hereof and are incorporated herein as if set out in full in this application. The undersigned, individually and for the applicant, hereby certifies that all statements made in this application and in all attached exhibits are true, complete and correct to the best of his or her knowledge and belief, and are made in good faith.

44. Applicant is a (an): (Choose the button next to applicable response.)

- ☐ Individual
- ☐ Unincorporated Association
- ☐ Partnership
- ☒ Corporation
- ☐ Governmental Entity
- ☐ Other (please specify)

45. Name of Person Signing
David K. Moskowitz

46. Title of Person Signing
Executive Vice President and General Counsel

47. Please supply any need attachments.

Attachment 1:

Attachment 2:

Attachment 3:

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND / OR IMPRISONMENT
(U.S. Code, Title 18, Section 1001), AND/OR REVOCATION OF ANY STATION AUTHORIZATION
(U.S. Code, Title 47, Section 312(a)(1)), AND/OR FORFEITURE (U.S. Code, Title 47, Section 503).

SATELLITE EARTH STATION AUTHORIZATIONS
FCC Form 312 – Schedule B:(Technical and Operational Description)
FOR OFFICIAL USE ONLY

Location of Earth Station Site

E1: Site Identifier:	N/A – multiple	E5. Call Sign:	
E2: Contact Name	David K. Moskowitz	E6. Phone Number:	(303) 723-1000
E3. Street:		E7. City:	
		E8. County:	
E4. State		E9. Zip Code	
E10. Area of Operation:		CONUS	
E11. Latitude:	0 °0 '0.0 "		
E12. Longitude:	0 °0 '0.0 "		
E13. Lat/Lon Coordinates are:	<input type="radio"/> NAD-27	<input type="radio"/> NAD-83	<input checked="" type="radio"/> N/A
E14. Site Elevation (AMSL):	0.0 meters		

<p>E15. If the proposed antenna(s) operate in the Fixed Satellite Service (FSS) with geostationary satellites, do(es) the proposed antenna(s) comply with the antenna gain patterns specified in Section 25.209(a) and (b) as demonstrated by the manufacturer's qualification measurement? If NO, provide as a technical analysis showing compliance with two-degree spacing policy.</p>	<input type="radio"/> Yes <input type="radio"/> No <input checked="" type="radio"/> N/A
<p>E16. If the proposed antenna(s) do not operate in the Fixed Satellite Service (FSS), or if they operate in the Fixed Satellite Service (FSS) with non-geostationary satellites, do(es) the proposed antenna(s) comply with the antenna gain patterns specified in Section 25.209(a2) and (b) as demonstrated by the manufacturer's qualification measurements?</p>	<input type="radio"/> Yes <input type="radio"/> No <input checked="" type="radio"/> N/A
<p>E17. Is the facility operated by remote control? If YES, provide the location and telephone number of the control point.</p>	<input type="radio"/> Yes <input checked="" type="radio"/> No
<p>E18. Is frequency coordination required? If YES, attach a frequency coordination report as</p>	<input type="radio"/> Yes <input checked="" type="radio"/> No
<p>E19. Is coordination with another country required? If YES, attach the name of the country(ies) and plot of coordination contours as</p>	<input type="radio"/> Yes <input checked="" type="radio"/> No
<p>E20. FAA Notification – (See 47 CFR Part 17 and 47 CFR part 25.113(c)) Where FAA notification is required, have you attached a copy of a completed FCC Form 854 and or the FAA's study regarding the potential hazard of the structure to aviation? FAILURE TO COMPLY WITH 47 CFR PARTS 17 AND 25 WILL RESULT IN THE RETURN OF THIS APPLICATION.</p>	<input type="radio"/> Yes <input checked="" type="radio"/> No

POINTS OF COMMUNICATION

Satellite Name: OTHER If you selected OTHER, please enter the following:

E21. Common Name: EchoStar 5	E22. ITU Name: USABSS 5
E23. Orbit Location: 129 deg W	E24. Country: Canada

POINTS OF COMMUNICATION (Destination Points)

E25. Site Identifier: N/A – multiple	
E26. Common Name:	E27. Country: USA

ANTENNA

Site ID	E28. Antenna Id	E29. Quantity	E30. Manufacturer	E31. Model	E32. Antenna Size<meters>	E41/42. Antenna GainTransmint and/or Recieve (____ dBi at ____ GHz)
N/A – multiple	N/A	1000000	Various – all using the following specs.	Various	0.55	34.3 dBi at 12.2

E28. Antenna Id	E33/34. Diameter Minor/Major (meters)	E35. Above Ground Level (meters)	E36. Above Sea Level (meters)	E37. Building Height Above Ground Level (meters)	E38. Total Input Power at antenna flange (Watts)	E39. Maximum Antenna Height Above Rooftop (meters)	E40. Total EIRP for al carriers (dBW)
N/A	0.67/0.497	0.0	0.0	0.0	0.0	0.0	0.0

FREQUENCY

E28. Antenna Id	E43/44. Frequency Bands (MHz)	E45. T/R Mode	E46. Antenna Polarization(H,V, L,R)	E47. Emission Designator	E48. Maximum EIRP per Carrier (dBW)	E49. Maximum ERIP Density per Carrier (dBW/4kHz)
N/A	12200 12700	R	Left and Right Circular	24M0G7W	0.0	0.0

E50. Modulation and Services (If the complete description does not appear in this box, please go to the end of the form to view it in its entirety.)

See attached Narrative

N/A	12200 12700	R	Left and Right Circular	24M0G7W	0.0	0.0
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E50. Modulation and Services (If the complete description does not appear in this box, please go to the end of the form to view it in its entirety.)

See attached Narrative

FREQUENCY COORDINATION

E28. Antenna Id	E51. Satellite Orbit Type	E52/53. Frequency Limits(MHz)	E54/55. Range of Satellite Arc E/W Limit	E56. Earth Station Azimuth Angle Eastern Limit	E57. Antenna Elevation Angle Eastern Limit	E58. Earth Station Azimuth Angle Western Limit	E59. Antenna Elevation Angle Western Limit	E60. Maximum EIRP Density toward the Horizon (dBW/4kHz)
			/					

REMOTE CONTROL POINT LOCATION

E61. Call Sign NOTE: Please enter the callsign of the controlling station, not the callsign for which this application is being filed.		E65. Phone Number	
E62. Street Address			
E63. City	E67. County	E64/68. State/Country /	E66. Zip Code

FCC NOTICE REQUIRED BY THE PAPERWORK REDUCTION ACT

The public reporting for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the required data, and completing and reviewing the collection of information. If you have any comments on this burden estimate, or how we can improve the collection and reduce the burden it causes you, please write to the Federal Communications Commission, AMD-PERM, Paperwork Reduction Project (3060-0678), Washington, DC 20554. We will also accept your comments regarding the Paperwork Reduction Act aspects of this collection via the Internet if you send them to jboley@fcc.gov. PLEASE DO NOT SEND COMPLETED FORMS TO THIS ADDRESS.

Remember – You are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060-0678.

THE FOREGOING NOTICE IS REQUIRED BY THE PAPERWORK REDUCTION ACT OF 1995, PUBLIC LAW 104-13, OCTOBER 1, 1995, 44 U.S.C. SECTION 3507.

Response to Question 36

In a Memorandum Opinion and Order released May 16, 2002, the Satellite Division of the International Bureau cancelled two conditional construction permits held by EchoStar affiliates for 22 channels at the 175° W.L. orbital location. *See In the Matter of EchoStar Satellite Corporation, Directsat Corporation, Direct Broadcasting Satellite Corporation, Consolidated Request for Additional Time to Commence Operation*, Memorandum Opinion and Order, DA 02-1164 (rel. May 16, 2002).

By Order released July 1, 2002, the International Bureau cancelled EchoStar's license for a Ka-band satellite system and dismissed a related modification application filed by EchoStar. *See In the Matter of EchoStar Satellite Corporation; Application for Authority to Construct, Launch, and Operate a Ka-band Satellite System in the Fixed-Satellite Service*, Memorandum Opinion and Order, DA 02-1534 (rel. July 1, 2002). On November 8, 2002, the International Bureau reinstated EchoStar's license for a Ka-band system as well as the related modification application. *See In the Matter of EchoStar Satellite Corporation; Application for Authority to Construct, Launch, and Operate a Ka-band Satellite System in the Fixed-Satellite Service*, Memorandum Opinion and Order, DA 02-3085 (rel. Nov. 8, 2002).

In a Memorandum Opinion and Order released April 29, 2004, the International Bureau denied, in part, four applications filed by EchoStar to operate GSO FSS satellites using the Ka and/or Extended Ku-bands at the 83° W.L., 105° W.L., 113° W.L., and 121° W.L orbital locations. *See In the Matter of EchoStar Satellite LLC, Applications for Authority to Construct, Launch, and Operate Geostationary Satellites in the Fixed-Satellite Service Using the Ka and/or Extended Ku Bands at the 83° W.L., 105° W.L., 113° W.L., and 121° W.L orbital locations*, Memorandum Opinion and Order, DA 04-1167 (rel. Apr. 29, 2004). EchoStar has petitioned for reconsideration of this decision.

In a Memorandum Opinion and Order released August 3, 2004, the International Bureau declared null and void the space station authorization held by VisionStar, an EchoStar affiliate, for use of the Ka-band at the 113° W.L. orbital location. *See VisionStar, Inc., Application for Modification of Authority to Construct, Launch and Operate a Ka-Band Satellite System in the Fixed Satellite Service*, Memorandum Opinion and Order, DA 04-2449 (rel. Aug. 3, 2004).

NARRATIVE

By this Application, EchoStar Satellite L.L.C. ("EchoStar") seeks authority to operate 1,000,000 receive-only earth stations in the United States to receive Direct Broadcast Satellite ("DBS") service from EchoStar 5 (or a comparable satellite) operated from the 129° W.L. orbital location allotted by the International Telecommunication Union to Canada. For the reasons set forth herein, grant of this Application would strongly serve the public interest, would not cause harmful interference, and would be consistent with the Commission's DISCO II policies.¹ The Commission has recently approved a similar request by DIRECTV, a DBS provider larger than EchoStar, to serve the U.S. from a Canadian-licensed DIRECTV satellite and the public interest benefits of this application are at least as compelling as those in the DIRECTV case.

I. BACKGROUND AND INTRODUCTION

EchoStar is the holder of many DBS licenses, including one allowing EchoStar 5 to operate 21 DBS channels at 119° W.L.² The EchoStar 7 satellite is also licensed to operate on these channels at the same orbital location. EchoStar has entered into a contractual arrangement with Ciel Satellite Communications, Inc. ("Ciel") whereby EchoStar has agreed to operate the EchoStar 5 (or a comparable satellite) at the 129° W.L. on an interim basis pending the launch of

¹ See *Amendment of the Commission's Policies to Allow Non-U.S. Licensed Space Stations Providing Domestic and International Service in the United States*, 12 FCC Rcd 24094 (1997) ("DISCO II").

² See *In the Matter of EchoStar Satellite Corporation Application for Minor Modification of Four DBS Space Station Authorizations*, Files Nos. SAT-MOD-20030303-00024, SAT-MOD-20030303-00025, SAT-MOD-20030303-00026, SAT-MOD-20030303-00027, SAT-STA-20030508-00092, DA 03-2379, Memorandum Opinion and Order (Released: July 22, 2003).

the Ciel-2 satellite to that location.³ Ciel has been authorized by Industry Canada to develop and operate a Broadcasting-Satellite Service ("BSS") satellite at the 129° W.L. orbital location.⁴

Pursuant to EchoStar's agreement with Ciel, EchoStar 5 will be redeployed to the 129° W.L. orbital location from which it will operate as a Canadian-licensed satellite. EchoStar and its affiliates will retain title to and ownership of EchoStar 5. To enable EchoStar 5 to serve the United States from this Canadian BSS position, EchoStar has also filed, along with this application, an application for special temporary authority to relocate EchoStar 5 to 129° W.L. and to perform telemetry, tracking, and command ("TT&C") operations to accomplish this relocation. In addition, EchoStar will be filing related feeder link and TT&C earth station applications to support the provision of DBS services from EchoStar 5 at that orbital location. For the reasons stated below, the expeditious grant of this application is in the public interest.

II. GRANT OF THIS APPLICATION IS IN THE PUBLIC INTEREST

The grant of this application is in the public interest because it would provide EchoStar with much needed spectrum to offer more local , high definition, and other programming. In addition, the provision of service from the 129° W.L. orbital location will be a significant part of EchoStar's plan to provide its local programming in each market on a single

³ A redacted copy of the agreement between EchoStar and Ciel is attached with this narrative as Exhibit 1. EchoStar is also submitting a hard copy of the unredacted agreement with a request for confidential treatment of the redacted materials.

⁴ See Letter from Jan Skora, Director General, Radiocommunications and Broadcasting Regulatory Branch, Industry Canada to Kevin B. Smyth, Chief Executive Officer, Ciel Satellite Communications, Inc., February 1, 2005. A copy of this letter is attached to this narrative as Exhibit 2. The approval in principle was granted to Ciel Satellite Limited Partnership. Ciel Satellite Communications, Inc. is the general partner in Ciel Satellite Limited Partnership.

satellite dish as required under the recently enacted Satellite Home View Extension and Reauthorization Act of 2004 ("SHVERA").⁵

The grant of this application would also be consistent with the Commission's recent grant of an STA request (and related applications) by DIRECTV Enterprises, LLC ("DIRECTV").⁶ In that proceeding, DIRECTV had entered into a similar arrangement with Telesat Canada ("Telesat") whereby DIRECTV would relocate the DIRECTV 5 satellite to Telesat's Canadian-licensed BSS slot at 72.5° W.L. from which DIRECTV would provide DBS service on an interim basis to the United States. The Commission approved that arrangement, despite finding that Canada did not meet the "effective competitive opportunities" test for comparable DBS services, because of the public interest benefits associated with increasing the number of markets able to receive local-into-local programming from DIRECTV.⁷ The arrangement between Ciel and EchoStar would have the same public interest benefits by increasing the number of markets in which EchoStar would be able to provide local-into-local programming for its subscribers and by allowing EchoStar to transition "two-dish" markets to one dish for all local stations in each market.

⁵ SHVERA requires that satellite carriers must provide all local stations in each market on a single satellite dish no later than 18 months after the effective date of the Act. See Section 203 of the Satellite Home View Extension and Reauthorization Act of 2004 (enacted December 8, 2004).

⁶ *In the Matter of DIRECTV Enterprises, LLC, Request for Special Temporary Authority for the DIRECTV 5 Satellite*, DA 04-2526, Order and Authorization, SAT-STA-20040107-00002, Call Sign S2417 (released Aug. 13, 2004) ("*DirecTV Order*").

⁷ *Id.* at ¶ 23.

In addition to the public interest benefits related to local-into-local service, granting this application would provide additional public interest benefits. It would also allow EchoStar to provide more high definition and other programming to compete more effectively with established cable operators in the multichannel video programming distribution ("MVPD") market. As the Commission is aware, EchoStar operates with significantly less bandwidth and programming capacity than is available to digital cable providers.

Lastly, grant of this application will allow EchoStar to offer DBS services to the United States from an orbital location that has not previously been available to serve the U.S. market, resulting in a net gain for U.S. consumers. All 32 DBS channels at the 129° W.L. orbital location are allotted by the International Telecommunications Union's Region 2 BSS plan to Canada. By moving EchoStar 5 to 129° W.L., EchoStar will be able to bring substantial new satellite capacity to bear in providing DBS service to U.S. consumers.

III. GRANT OF THIS APPLICATION WILL NOT CAUSE HARMFUL INTERFERENCE TO OTHER SATELLITES

The grant of this application will not present any significant risk of interference to other U.S. satellites and non U.S. satellites. There are no currently operational satellites using these frequencies within 9 degrees of the 129° W.L. location and, as demonstrated in the attached Technical Annex, the operation of EchoStar 5 from the 129° W.L. orbital location will pose no risk of harmful interference to any DBS operator. Further, as indicated in EchoStar's space station STA to relocate EchoStar 5 to the 129° W.L. orbital location, EchoStar will coordinate with potentially affected satellite operators in accordance with industry practice during the relocation of the satellite, with only TT&C operations being performed in the DBS bands during

this interim period. Once the satellite reaches 129° W.L. and is ready for operations, both DBS and TT&C operations will be conducted at that location.

IV. GRANT OF THIS APPLICATION WOULD BE CONSISTENT WITH THE COMMISSION'S DISCO II POLICIES

Under its *DISCO II* framework, the Commission evaluates whether the proposed operation of the EchoStar 5 satellite at a Canadian orbital location would serve the public interest. The *DISCO II* analysis includes consideration of a number of factors, including the effect on competition in the United States, eligibility and operating requirements, spectrum availability, and national security, law enforcement, foreign policy and trade concerns.⁸ As part of this analysis, the Commission examines the "effective competitive opportunities" afforded to U.S. satellite operators in the home market of the foreign satellite seeking U.S. market access.⁹

In three prior proceedings, the Commission has concluded that the provision of MVPD service using Canadian satellites would serve the public interest, despite the lack of effective competitive opportunities afforded to U.S. DBS providers in Canada.¹⁰ Most recently, in the

⁸ See *DISCO II*, 12 FCC Rcd. at 24107-72.

⁹ *Id.* at 24098 ("For satellites licensed by non-WTO Members and for all satellites providing Direct-to-Home (DTH), Direct Broadcasting Satellite (DBS), and Digital Audio Radio Services (DARS), we will examine whether U.S. satellites have effective competitive opportunities in the relevant foreign markets to determine whether allowing the foreign-licensed satellite to serve the United States would satisfy the competition component of the public interest analysis.").

¹⁰ The Commission necessarily concluded that there was a "compelling reason" to permit access to the U.S. market in these cases. See *In the matter of Digital Broadband Applications Corp.; Consolidated Application for Authority to Operate U.S. Earth Stations with a U.S.-Licensed Ku-Band FSS Satellite and Canadian-Licensed Nimiq and Nimiq 2 Satellites to Offer Integrated Two-Way Broadband Video and Data Service Throughout the United States* (Call Sign E020010), Order, 18 FCC Rcd. 9455, 9461-63 (Released: May 7, 2003) ("DBAC"); *In the matter of Pegasus Development Corporation; Consolidated Applications for Authority to*
(Continued ...)

DIRECTV decision, the Commission considered circumstances that are virtually identical to those presented by this Application (except that *DIRECTV*, of course, is an appreciably larger MVPD distributor than EchoStar). The Commission concluded that *DIRECTV*'s provision of additional local-into-local service provided a compelling public interest justification supporting grant of the application.¹¹ The public interest benefits of EchoStar's proposed use of the relocated EchoStar 5 satellite to provide DBS service in the United States are at least as compelling as those previously relied on by the Commission.

As described above, grant of this application would: (i) provide EchoStar with additional spectrum to provide local-into-local and other programming and be a significant part of EchoStar's plan for transitioning local broadcast stations onto a single consumer satellite receiver as required by SHVERA; (ii) allow EchoStar to compete more effectively against established operators in the MVPD market; and (iii) enhance spectrum efficiency by making available new DBS channels from a Canadian orbital slot.¹²

Operate one U.S. Transmit/Receive Fixed Earth Station (Call Sign E010320) and 1,000,000 Receive-Only Earth Stations (Call Sign E020022) with the Canadian-Licensed Nimiq 1 and Nimiq 2 Satellites to Offer Direct Broadcast Satellite Service Throughout the United States, Order, 19 FCC Rcd. 6080, 6086 (Released: March 31, 2004) ("Pegasus"); see generally DIRECTV Order.

¹¹ *DIRECTV Order* at ¶ 12. The Commission specifically concluded that while grant of *DIRECTV*'s request would not provide the benefits associated with entry of a new competitor into the MVPD market, the benefits resulting from grant of *DIRECTV*'s proposal are nonetheless compelling and warrant favorable action. *Id.* at ¶ 9.

¹² While EchoStar has suggested that the Commission should better define the "compelling reason" standard as part of a comprehensive rulemaking proceeding to address the provision of DBS service from more closely spaced BSS slots and foreign BSS assignments, EchoStar believes that the numerous substantial and undeniable public interest benefits associated with this Application would satisfy the standard, however further defined. In addition, EchoStar's main reason for requesting a rulemaking was to ensure evenhanded treatment. Since the Commission elected to grant *DIRECTV*'s application without a rulemaking, evenhandedness means a similar grant of EchoStar's request. *See, e.g., EchoStar Comments,* (Continued ...)

In the *DBAC* and *DIRECTV* proceedings, the Commission considered whether competitive distortions might result from authorizing the applicants to provide the services proposed. In those cases, the Commission concluded that competitive distortions would be likely to result only under certain limited conditions: (i) through use of a Canadian satellite, the applicant would have access to cost savings, subsidies or quality-enhancing assets not available to other U.S. service providers; (ii) those cost savings, subsidies, or quality-enhancing assets would be sufficiently large to enable the applicant to offer prices and quality of services that would cause some or all of the incumbent U.S. DTH/DBS providers to exit the market; (iii) following exit of some or all of the domestic DTH/DBS providers, the applicant would be able to raise the price of service to U.S. customers; and (iv) entry barriers exist such that neither the incumbent U.S. DTH/DBS providers or new U.S. DTH/DBS providers could enter the market, thereby defeating the price increase.¹³ The Commission also noted that competitive distortions related to predatory pricing are rare, in part because of the high risk that they will be unsuccessful.¹⁴

Most recently, the Commission concluded that, although grant of the *DIRECTV* application would provide that applicant with access to quality-enhancing assets (*i.e.*, satellite capacity from a foreign-licensed satellite for the provision of local-into-local services in more markets in which *DIRECTV* is not currently providing this service), there was nothing in the

File No. SAT-STA-20040107-00002, at 5; *see also* EchoStar Reply Comments, File No. SAT-STA-20040107-00002, at 5.

¹³ *DBAC*, 18 FCC Rcd. at 9462-63, ¶ 16.

¹⁴ *Id.*

record to suggest that this would allow DIRECTV to carry out a predatory strategy. The competitive issues implicated by EchoStar's proposal are virtually identical to those presented in the *DIRECTV* case -- a DBS/DTH provider seeking to utilize a satellite at a Canadian orbital location to provide new MVPD services, in order to facilitate new and enhanced services, with one exception: EchoStar is a smaller MVPD provider than DIRECTV. A fortiori, therefore, there is nothing here to suggest that grant of EchoStar's request would facilitate a predatory or other anti-competitive strategy.

In addition, EchoStar has demonstrated compliance with the Commission's eligibility and operating requirements,¹⁵ and there are no spectrum availability, national security, law enforcement, foreign policy or trade concerns that would warrant treating this Application differently from those previously granted by the Commission.

¹⁵ See Technical Annex.